

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5635 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SANJIBHAI DEVLABHAI

Versus

GANDABHAI SUKKARBHAI & ORS.

Appearance:

MR RAVI R TRIPATHI for Petitioner

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/09/96

ORAL JUDGMENT

The petitioner, by this petition, is challenging the orders dated 4.4.84 and 5.10.82, annexures 'C' and 'B' passed by the Gujarat Revenue Tribunal in Revision Applications No.TEN B.S. 480/83 and TEN B.S.142/81 respectively.

2. The facts of the case, in brief, are as under:

The land in dispute is an agricultural land comprising in Survey No.813 of Tirkari-Talat, Taluka Dharampur, admeasuring 1 Acre 39 Gunthas. Shri Maganbhai Narbharam was the original owner of the land in dispute. Shri Sukaria Bhaylu was cultivating the said land as a tenant. The respondent Nos. 1 and 2 herein are the heirs of late Sukaria Bhaylu and the respondent No.3 is the son of Shri Maganlal Narbharam, the original owner of the said land.

3. The Mamlatdar, in inquiry u/s.32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Act 1948) held under its order dated 16.4.62 that the tenant has shown his unwillingness to purchase the land in question and accordingly the same has been dropped. It appears that later on inquiry has been started by the Mamlatdar u/s.32P of the Act 1948, as it stood at that time and it has been decided therein that the possession of the land in question be restored to the landlord from the tenant. The order has been made by the Mamlatdar on 7.7.62. In pursuance to the said order, entry No.618 dated 20.11.62 appears to have been made in the revenue record. Later on the Mamlatdar and A.L.T. held suo-motu inquiry u/s./32PP of the Act 1948 and issued notices to the tenant and to the heirs of the original landlord, since deceased. After recording statements of the parties, and perusing other documentary evidence, by its order dated 29th May 1973, the Mamlatdar has come to the conclusion that the possession of the disputed land should be handed over to the heirs of the original tenant. The said land appears to have been sold to a third party, namely the present petitioner. Being aggrieved and dissatisfied with the aforesaid decision of the Mamlatdar, the petitioner has taken the matter in appeal before the learned Assistant Collector. The Assistant Collector, under its order dated 10.5.74 accepted the appeal. The heirs of the original tenant had approached to the Tribunal by way of revision being Revision Application No.TEN.B.S./180/75. The Tribunal, under its order dated 6.7.77 remanded the matter to the Mamlatdar. The petitioner has not produced on record of this petition, this order of the Tribunal. The Mamlatdar, in pursuance of the order of remand held further fresh inquiry and recorded statement of one Shri Madhubhai Shukkarbhai and Sanjibhai Devlabhai. An opportunity has also been afforded to the parties to produce documentary evidence. After considering the evidence on record, the Mamlatdar, under its order dated 4.9.79 came to conclusion that the possession of the land should be given to the heirs of the original landlord. Dissatisfied with the order dated 4.9.79, the petitioner went in appeal before Deputy Collector. The Deputy

Collector dismissed the appeal on 1.6.81. The matter has been further carried by the petitioner to the Gujarat Revenue Tribunal by filing Revision Application No.TEN.B.S.142/81. The Tribunal has disposed of the said Revision Application under its order dated 5.10.82. The order of both the Courts below were set aside and it is directed that the Mamlatdar should resume and dispose of the land in question as required u/s.32P of the Act 1958 as early as possible. Though this order has been made by the Tribunal in the Revision Application of the petitioner on 5.10.82, he has not challenged the same at any point of time earlier to 28th November 1984. After the order of Tribunal dated 5.10.82, the concerned authority has taken necessary action in the matter and in consequence thereof possession of the petitioner in respect of the land had been held to be unauthorized and consequently the said authority has held summary proceedings u/s.84 of the said Act for eviction of the petitioner from the land in dispute. Under the order dated 11.10.83, the petitioner was ordered to be evicted from the land. The aforesaid order which was made u/s.84 of the Act 1948 has been challenged by the petitioner by filing Revision Application No.TEN.B.S.480/83. The said Revision Application has been dismissed by the Tribunal under its order dated 4.4.84. Originally, in this Special Civil Application, the petitioner had challenged the order of the Tribunal dated 4.4.84. The order dated 5.10.82 has not been challenged even in this Special Civil Application originally. From the record of this petition it transpires that the petitioner moved an amendment application for amendment of Special Civil Application being Civil Appeal No.5013 of 1984. This Civil Application has been allowed by this Court on 28th November 1984 and the petitioner has challenged that order by amending this petition. The learned counsel for the petitioner contended that eviction of the petitioner from the land in question under the order dated 11.10.83 was in pursuance of the order of Tribunal dated 5.10.82 and when the later order was itself bad, the consequential order also cannot be allowed to stand.

4. I have given my thoughtful considerations to the submissions made by the learned counsel for the petitioner.

5. Challenge to the order dated 5.10.82 made in this Special Civil Application deserves to be dismissed only on the ground of delay and laches. This order has been passed on 5.10.82 and the petitioner has not challenged the same before this Court. Only when the consequential order of his eviction from the land in dispute has been

made by the competent authority then only he has prayed for quashing of that order by amending this petition. This delay in challenging this order by the petitioner itself is sufficient for the dismissal of this writ petition. The petitioner has not furnished any explanation whatsoever for this delay which is made by him in approaching this Court against the order dated 5.10.82. It is a writ of Certiorari and delay of about two years in challenging that order is fatal.

6. So far as the order dated 4.4.84 is concerned, the Tribunal did not find any error therein. The Tribunal held that in view of the admitted facts on record, no further discussion is required nor any evidence is required to be appreciated in that behalf. The Tribunal has considered it to be a case which does not call for any interference of it in its revisional jurisdiction. Eviction of the petitioner from the land in question was a consequential action of the order dated 5.10.82. When the land was ordered to be resumed then certainly the petitioner was a trespasser. The petitioner has purchased the land from the landlord and no right, title or interest of that person was accepted in the present case and the status of the petitioner was only that of a trespasser or a person in unauthorised occupation thereof. In view of these facts, it is not a case where the order of eviction has been made without hearing the petitioner. Summary proceedings were initiated u/s.84 of the Act 1948. The petitioner has no right whatsoever to continue in the possession of the land. I do not find any illegality in the order made by the Tribunal dated 4.4.84 which calls for any interference of this Court. Against the order made by the Tribunal u/s.76 of the Act 1948, legislature has not provided any appeal or revision to the High Court. The object is to give finality to the decision of the Tribunal. The Act 1948 is a special legislation governing landlord and tenant relationships and disputes. The High Court, under Article 227 of the Constitution, cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes. The learned counsel for the petitioner, though the Court has asked him to give out, has failed to give out the document of transfer of the land to the petitioner by the original landlord. He only relied on the fact that the said transfer has been accepted and in the revenue record, his name has been entered. The petitioner has even not produced on record

the Entry from the land revenue record. Looking to the facts of the case where the tenant himself has, at one point of time, given up his claim for purchase of this land and the fact that the petitioner is unable to produce on record, any documentary evidence of transfer of the said land, the orders passed by the authority for eviction of the petitioner and the order confirming the said order by the Tribunal, are just and reasonable and do not call for interference of this Court.

7. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Ad-interim relief granted by this Court stands vacated. No order as to costs.

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(sunil)